

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-680

July 12, 2002

TIME WARNER, INC. AND BEE LINE CABLE
Request for Commission Investigation
Into Central Maine Power Company's
Refusal to Provide Appropriate Services,
Rates, Terms and Conditions to the Cable
Companies

NOTICE OF INVESTIGATION
AND ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

By way of this Notice of Investigation and Order we grant in part and reject in part the requests of Time Warner, Inc. (Time Warner) and Bee Line Cable TV (Bee Line), collectively referred to as "Complainants" or the "Cable Companies," that the Commission investigate alleged unreasonable acts and discriminatory practices of Central Maine Power Company (CMP) with regard to the rates, terms and conditions of service provided to the Complainants. Specifically, we will investigate in this proceeding the issue presented in the Cable Companies' request that CMP's metering of the Complainants' accounts is unnecessary, unreasonable, unjust and discriminatory; whether a deemed load profile should be used to establish the load obligations of the Cable Companies' energy suppliers; and whether CMP's separate account billing of Complainants is unreasonable, unjust, discriminatory and anti-competitive. We do not find meritorious the Complainants' allegations that the imposition of the SGS rate classification on the Complainants is unreasonable, unjust and discriminatory and, therefore, reject the Complainants' request that we investigate this matter further.

II. BACKGROUND

On September 28, 2001, Time Warner and Bee Line filed a complaint with the Commission, pursuant to 35-A M.R.S.A. §§ 1302 and 1303, requesting that the Commission investigate allegedly unreasonable acts and discriminatory practices of Central Maine Power Company (CMP) with regards to the rates, terms and conditions of service provided to the Complainants. Specifically, the Complainants allege that: 1) the imposition of the SGS rate classification on Complainants is unreasonable, unjust and discriminatory; 2) CMP's metering of the Complainants' accounts is unnecessary, unreasonable, unjust and discriminatory; and 3) CMP's separate account billing of Complainants is unreasonable, unjust, discriminatory and anti-competitive.

By way of a Notice of Complaint issued by the Commission on October 4, 2001, CMP was served with a copy of the complaint and was provided with an opportunity to respond. As part of the Notice of Complaint, the Commission found that because the

complaint was not made by 10 or more persons it would not be processed under 35-A M.R.S.A. § 1302; rather, the complaint would be treated as a request that the Commission initiate an investigation under 35-A M.R.S.A. § 1303.

CMP submitted its response to the complaint on October 18, 2001, and on November 18, 2001, the Cable Companies filed their reply to CMP's response.¹ A conference of counsel to clarify the issues raised by the complaint and to discuss possible resolutions was held on February 28, 2002. Responses to oral data requests posed by the Advisory Staff at the conference were filed on March 7, 2002 by the Complainants and on March 14, 2002 by CMP.

On March 19, 2002, the Examiner issued a Procedural Order which provided parties with an opportunity to submit briefs as a means of summarizing their positions. On April 9, 2002, the Complainants and CMP submitted their briefs. As part of its brief, CMP also submitted the affidavit of Lindley Peaco. The Hearing Examiner issued his Examiner's Report on May 22, 2002, and on June 5, 2002 and June 7, 2002, CMP and the Cable Companies filed their respective exceptions to the Examiner's Report.

III. POSITIONS OF THE PARTIES

The Cable Companies submitted the affidavit of Mark Isaacson, containing an analysis of Time Warner's electricity consumption and recommendations.

According to Mr. Isaacson, the cable system is supported by a network of repeaters, which are in turn supported by a network of power supplies that draw electricity from the grid. The number of repeaters per power supply varies between three and fifteen (15) and the power supplies draw between fifty-eight (58) and six hundred eighty (680) kWh per month. According to Mr. Isaacson, the load from a repeater, once connected, is essentially invariable and, like street lighting, can be accurately predicted from engineering data.

The Cable Companies argue that since their load shape is flat while the overall load shape for the SGS customer group is curved, the Cable Companies are not able to receive a fair and accurate price for generation service from the competitive market. Mr. Isaacson argues that since the Cable Companies' load shape is flat and bears little resemblance to the load shape of the remainder of the SGS class, charging them SGS rates is unfair. Since the Cable Companies' load is invariable, there is no need to meter this load and that metering costs represent an unnecessary burden to these customers.

¹In their reply, the Complainants stated that their request for an investigation under 35-A M.R.S.A. § 1302 was not intended to be a 10-person complaint made under the provisions of 35-A M.R.S.A. § 1302(1), but was rather a request that the Commission initiate an investigation under its authority under 35-A M.R.S.A. § 1302(3). Since we can see no distinction between a request for a Commission investigation under § 1302(3) and 1303, we will continue to treat the complaint as a request for an investigation under 35-A M.R.S.A. § 1303.

In addition, maintaining separate accounts for each power supply source is a waste of effort and that all the accounts should be treated as a single account for billing and metering. Finally, Mr. Isaacson argues that these two factors – the Cable Companies' being given the load shape of the SGS class and each of the power supply accounts being separately metered – prejudice the Cable Companies' ability to shop for power. The only solution under CMP's current tariffs would be for the Cable Companies to go on the SGS-TOU rate, which would require the installation of even more expensive TOU meters. Thus, this "solution" is no solution at all. The Cable Companies therefore conclude that their placement in the SGS rate class is fundamentally unfair and unlawful, and that a Commission investigation of the proper class of service is warranted and required.

CMP has two basic responses to the Cable Companies' complaint. First, CMP argues that the Complainants' load shape does not justify special treatment. In support of this position, CMP asserts that every rate classification is essentially a judgment call and that in *Central Maine Power Company, Investigation of Cost of Service and Rate Design*, Docket No. 86-02, the Commission established the SGS rate class for non-residential customers whose demand does not exceed 20 kW. The SGS class, like all other rate classes, is made up of customers with a variety of load shapes. The rates charged for the class are based on the class average load shape which includes the load shape of Cable Companies, as well as many other customers whose load shape differs from the class average. Thus, having a relatively flat load shape is not in itself a reason to give the Cable Companies special rate treatment or to establish a rate class just for such customers. Although the cost of serving the Cable Companies' load may be less than serving other members of the SGS class due to their load shape, there may be other factors which increase the cost of serving the Cable Companies. The only way to determine the actual costs of serving the companies is through a cost of service study. Even if the Complainants' arguments did warrant reassessment of the Cable Companies' placement in the SGS class, such reassessment should take place in the context of a full scale rate design case.

In response to the arguments regarding the need to meter the Cable Companies' accounts, CMP acknowledges that each individual account generally uses the same amount of energy per month. The usage among accounts, however, varies significantly. More importantly, CMP argues that if the meters were removed from the Cable Companies' accounts, CMP would have no efficient way to monitor usage. Unlike street and area lighting devices which are installed and maintained by CMP, the Cable Companies themselves install and maintain the cable repeaters. CMP does not know when and which repeaters are installed by the Cable Companies. In addition, since technology is constantly changing, it is likely that different repeaters with different energy requirements will be developed. CMP notes that by requiring meters on the Cable Companies' equipment, the Cable Companies, in fact, are being treated like all other lighting customers who install and maintain their own equipment.

The Cable Companies counter CMP's argument by noting that while the SGS load shape does include the Cable Companies' load in the average, the shape of their

load is so different that it simply does not belong with the class average. The Cable Companies equate CMP's position with arguing that a medium size suit is a good fit for two customers, one a giant and one a midget. The Complainants argue that using a non-metered approach for repeaters would simply require an engineering analysis which is no different than what CMP is currently doing for lighting customers where CMP has usage ratings for 356 different types of lights and equipment. The only distinction between street and area lighting and cable repeaters is that street lighting equipment is installed by CMP while repeaters are installed by the Cable Companies. The opportunity for cheating, implied in CMP's argument, is minimized, however, because CMP itself must be involved when a new power supply is added and cheating is already prohibited by law.

We address each of the issues raised by the Complainants below, beginning with whether Complainants' repeater accounts should continue to be metered.

IV. DECISION

A. Removing Meters From Cable Companies' Accounts

As discussed above, the Cable Companies argue that other than power or mechanical failures, the electrical demand and consumption of cable repeaters are perfectly predictable and that their load shape is perfectly flat. Thus, the Cable Companies argue that their situation is indistinguishable from street and area lighting customers whose use is not metered but based on engineering data.

Based on the information presented to date, it is our understanding that once a repeater is put in service and remains running, it draws a constant level of energy. Therefore, there seems to be some logic to the Complainants' argument that it is unnecessary to meter the energy consumption of each repeater. A review of the account by account billing data supplied by CMP in response to the Cable Companies' complaints seems to show, however, that the monthly usage is not constant, nor even close, for many accounts. For example, for one account monthly usage ranges from 70% below to more than 80% above the account's annual average usage. For another account monthly usage ranges from 77% below to 55% above its average. For another, usage ranges from 45% below to 50% above its average. Month-to-month variations are even higher, in several cases well above 50%.

In his affidavit, Mr. Isaacson states that of the accounts that showed a variance, in more than half of the cases the variance could be eliminated by averaging consumption over two or three months. Mr. Isaacson explained that it was likely that this type of variance was caused by meter read error, an out of sequence meter read or a meter read based upon estimated instead of actual data. The next most common cause of the variances were new accounts followed by additions or removals of repeaters from the power supply. Mr. Isaacson concluded that only 2% of the variances were truly unexplained.

Although we cannot say at this point whether the variations in the monthly usage are truly explainable, based on the information presented we find that the Cable Companies have provided us with sufficient information to warrant the opening of a proceeding to investigate the Complainants' position that it is not necessary to meter the Cable Companies' accounts. In deciding to open this investigation, we make no finding as to whether the usage pattern of each repeater is such that it is, in fact, feasible to calculate the Cable Companies' repeater usage solely based on engineering data.²

In support of its argument that the Cable Companies' accounts should continue to be metered, CMP cites Chapter 320 of the Commission's Rules, which provides that unless otherwise impracticable, all electrical energy sold by a utility shall be measured by acceptable measuring devices owned and maintained by the utility. MPUC Rules, ch. 320, § III(A)(3.01). CMP argues that metering the Cable Companies' accounts clearly is not impracticable since this is the current practice. In making this argument, CMP appears to be interpreting the term "impracticable" as meaning "not possible" or "incapable of being performed." A broader interpretation of the term "impracticable," however would encompass something which is not feasible or which is unwise.³

As a general matter, pursuant to the provisions of 35-A M.R.S.A. § 301, electric service should be provided as cheaply, efficiently and economically as possible by the utility. We therefore do not accept CMP's interpretation of Chapter 320, which would require metering of all accounts if physically possible even if such metering made absolutely no economic sense. Were we to accept CMP's interpretation, it would seem that even the non-metering of street lighting would not be allowed since it is likely that it would at least be physically possible to meter each street light. We thus interpret Chapter 320 to allow for non-metering of accounts where it is either not feasible to meter or metering would serve no economic or technical function that cannot be achieved more cheaply using other usage-gathering methods.

Finally, CMP argues that even if a given repeaters' usage is constant, as alleged by the Complainants, and not metering these accounts is allowed by Chapter 320, the Cable Companies' situation is nonetheless distinguishable from that of street and area lighting customers since CMP installs and maintains the lighting equipment for these customers and thus can fully monitor the equipment and usage on its system. While we make no final determination on this issue at this point, it would appear that CMP's objections could be met by establishing a protocol of reporting which includes

²One possible solution to variability in usage caused by the mechanical failure of the repeaters would be to calculate the Cable Companies' usage based on the maximum draw of each repeater assuming 100% operation. This assumption would hold CMP harmless from the impact of such variability.

³Impracticable is defined in Webster's Third International Dictionary as incapable of being performed or accomplished by the means employed; infeasible; impractical, unwise or imprudent.

penalties for cheating or otherwise failing to accurately report equipment on the system. To the extent CMP wishes to pursue this argument further during the investigation it may do so in the context of our determination of the feasibility of not metering these accounts.

B. Establishing a Separate Rate Class for Cable Company Use Based on their Flat Load

There appear to be two facets to the Cable Companies' argument that a separate rate class should be established for them based on their flat load shape. First, since the Cable Companies' load shape is flat, their T&D cost characteristics are significantly different from those of the SGS class as a whole, requiring a separate T&D rate class for their use. The second facet of the Cable Companies' argument is that by being part of the SGS class, the Cable Companies' load shape for purposes of buying power from the competitive generation market is defined by the SGS load profile. Since the shape of this load profile is more costly to serve than the Cable Companies' actual load shape, the Cable Companies argue that they are unable to attract reasonable offers from suppliers in the competitive market. We address each of these arguments below.

As we have noted on prior occasions, rate design is one of the most complex tasks this Commission performs, involving the balancing of numerous and often competing factors among customer classes and individual class members. These factors include economic cost causation, recovery of embedded or historic costs, rate stability, understandability and equity. *Public Utilities Commission, Investigation of Central Maine Power Company's Revenue Requirements and Rate Design*, Docket No. 97-580, Order at 115. The examination of underlying costs is at the heart of any rate design proceeding. *Id.*

As a general matter, utility rate classes are made up of many customers with varying cost characteristics, each paying rates that reflect the average for the class. CMP's SGS class is no different in this regard. Even were we to accept the Cable Companies' argument that their load shape is totally flat, it is unclear how much, if at all, this affects the costs of providing distribution-only service in Maine's restructured electric utility world. In addition, as noted by CMP in its brief, there may be factors, in addition to load shape, such as the need to place each repeater on a pole, that would cause the costs to serve the Cable Companies to be greater than for an average SGS customer.

At a minimum, then, to develop a new rate class for Cable Companies it would be necessary to conduct a cost of service study for these customers. Moreover, the decision on how costs should be assigned or allocated to a particular customer class, by definition, implicates cost allocations and, ultimately, rates paid by customers in other classes. Therefore the question of whether to establish a separate rate class for the Complainants and those similarly situated cannot be answered in isolation. Before would initiate an investigation to carve out a new rate class, the Complainants

would thus need to make at least a prima facie showing that the cost differences between the new class and the existing class justified a new rate class. Such a showing has not been made here. We thus decline to open an investigation to determine whether to establish a separate rate class for the Cable Companies.

In so concluding, we note that there currently exists an SGS rate class (SGS-TOU) that would capture the relatively lower cost of a flatter-than-average load shape. As discussed above, we will investigate whether the Cable Companies' accounts should continue to be metered. As part of this investigation, the parties should address the question of whether it would be feasible and appropriate to charge the Cable Companies the SGS-TOU rate should we determine that the energy usage of the repeaters is constant as alleged by the Complainants.

With regard to the second facet of the Complainants' argument, Chapter 321 of the Commission's Rules establishes the load profiling procedures for purposes of establishing the load obligations of competitive electricity providers. Under the provisions of Chapter 321, transmission and distribution utilities are required to develop 24-hour load profiles that may be used to represent each day of the year for residential, small non-residential and medium non-residential customer groups. Each customer profile group is to be used to represent those customers not telemetered. MPUC Rules, ch. 321, § 4(A)(1). Chapter 321 of the Commission's Rules also provides that deemed load profiles are permissible, but not required, for customers whose loads are easily estimated through engineering characteristics. MPUC Rules, ch. 321, § 4(A)(3). Since the Cable Companies are not telemetered, their loads are currently defined by the load profile for small non-residential customers. Thus, any CEP that serves the Cable Companies would incur costs as determined by the profile and, presumably, would reflect those costs in the Cable Companies' prices.

The Cable Companies argue that their actual load is constant, i.e. "all-hours," which is less costly to serve and is a convenient match with the structure of energy "strips" commonly traded in the power market. If the load is indeed "all-hours" due to the physical nature of the repeaters, Chapter 321 allows a deemed load profile to be used to establish the load obligations of their suppliers. We find that such an approach should be explored as part of our investigation of whether the Cable Companies' usage is constant as alleged for metering purposes.

With respect to the timing for use of any deemed profile for these loads, during the process of procuring standard offer service for CMP's small non-residential customers, the Commission represented that the current load profiles would apply through February, 2003. Therefore, use of a deemed profile for these accounts could not occur until then. After that point, a deemed profile could be used and, if necessary, the profile for the remainder of the small non-residential class adjusted accordingly.

The Cable Companies recognize that given current standard offer prices they probably would not be looking to enter the competitive market at this time. Thus, under current market conditions, the Cable Companies would not be prejudiced by

delaying the application of a deemed load profile until after February, 2003 should we determine that such an approach is appropriate as part of our investigation here.

C. Account Consolidation for Billing Purposes

The Cable Companies also argue that their many accounts should be combined into a single account for T&D and supply billing purposes, as well for enrollment with CEPs. Based on the information presented, it appears that at least some form of consolidation may be warranted and is not objected to by CMP. As the form of such consolidation likely will depend on how we decide whether the Cable Companies' repeater accounts should continue to be metered, we will also address this issue as part of our investigation here.

V. **NOTICE OF PROCEEDING**

For the reasons set out above, we grant in part and deny in part the Complainants' request to open an investigation pursuant to the provisions of 35-A M.R.S.A. § 1303. A copy of this Notice of Investigation and Order shall be sent to the service lists in Docket Nos. 2001-245 and 97-596. CMP shall also provide a copy of this Notice to other cable company customers who might be affected by the outcome of this proceeding. Interested persons wishing to intervene may file a petition to intervene in accordance with section 720 of the Commission's Rules of Practice and Procedure no later than **July 30, 2002**. Objections to petitions to intervene may be made at the initial case conference scheduled for **August 7, 2002 at 10:00 a.m.** in the Commission's Hearing Room. At such time, the litigation schedule and other issues related to the orderly processing of the case will also be discussed.

Dated at Augusta, Maine, this 12th day of July, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond